

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4240 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

JAYANTIBHAI VIRUBHAI PATEL

Versus

JIGNASABEN RATILAL DAVE DECD. THRO'MADHUKANTABEN RAILAL DAVE

Appearance:

MR PRADEEP PATEL for Petitioner No. 1-3
MR TEJAS D KARIA with MR BD KARIA for Resp. No. 1
MR PREMAL JOSHI AGP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. This is a petition under Articles 226 and 227 of the Constitution filed by the administrator of M/s. Gravity Instruments Pvt. Ltd. (hereinafter referred to as 'the Company') which is closed since 31st October, 1996, against the award passed in Reference (LCA) No.1659

of 1999 on 17.4.2000.

2. The daughter of the respondent herein is alleged to have been appointed on and from 17th January, 1992 and she was orally terminated in the month of August, 1992. The daughter, original workman, namely, Jignasha Dave, has expired on 13th September, 1998 and she is represented by her mother in the present petition. In the backdrop of peculiar facts and circumstances of the case, wherein the Company is closed in the year 1996 and the workman has expired in September 1998, the petition was taken up for final disposal at the instance of the learned counsel on both sides.

2.1 Initially, the Reference Case No.23 of 1993 was filed by the workman challenging her termination. The said reference was decided ex-parte on 21.6.1997. The Miscellaneous Application No.101 of 1998 came to be file in the Reference Case No.23 of 1993 by the petitioner under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1961 to set aside the ex-parte award passed by the Labour Court on 21.6.1997. The Labour Court passed an order on 30.10.1999 allowing the application filed by the petitioner and restored the reference on the condition to pay a sum of Rs.1,500/- to the workman. Upon restoration of the reference case, the same was renumbered as Reference (LCA) No.1659 of 1999. Since the workman expired on 13.9.1998 after passing of the award on 21.6.1997, the amount as ordered could not be paid to the workman concerned. Under the circumstances, an application was filed by the representative of the workman to restore the order dated 21.6.1997 and allow the Reference (LCA) No.1659 of 1999. Even at this stage, no application was made by the representative of the workman before the Labour Court to bring on record heirs and legal representatives of the deceased workman.

3. The fact remains that Reference (LCA) No.1659 of 1999 came to be allowed in favour of a dead person by restoring and confirming the award passed on 21.5.1997 in the Reference Case No.23 of 1993. It may be mentioned here that prior to filing of Reference Case No.23 of 1993, an Application No.1009 of 1992 was also filed by the workman under the Payment of Wages Act to recover the wages for the period before the alleged date of termination. It also appears that after the decision rendered in Reference Case No.23 of 1993, another Application No.368 of 1998 came to be filed under the provisions of the Payment of Wages Act and the same was allowed.

4. Admittedly, the Reference (LCA) No.1659 of 1999 could not have been disposed of by restoring and confirming the award made in previous Reference Case No.23 of 1993 which was quashed and set aside by an order dated 30.10.1999 in favour of a person who was no more. No application was filed by the representative of the workman to bring on record heirs and legal representatives of the deceased workman in Reference (LCA) No.1659 of 1999 before making the prayer to allow it in view of non-compliance with the condition of payment. It appears from the previous award passed by the Labour Court in Reference Case No.23 of 1993 that the deceased workman had only filed an affidavit stating that she had completed 240 days in the preceding year without there being anything more to substantiate her case. As per the decision of the Apex Court reported in AIR 2002 SCW 909 in case of RANGE FOREST OFFICER v. S.T.HADIMANI, onus lies upon the workman claiming retrenchment compensation to show that he had in fact worked for 240 days in the year preceding the termination.

5. In view of the fact that the petitioner has already closed the undertaking in the year 1996 and the workman has died in the year 1998, no fruitful purpose would be achieved by remanding the case. During the pendency of this petition, the petitioners were ordered to deposit a sum of Rs.43,500/- and the said order is complied with by the petitioners. Before deciding the individual liability of the petitioners, an attempt was made to settle the matter by paying a lumpsum amount of Rs.50,000/- to the respondent, the mother of the deceased workman. The learned counsel for the parties were in broad agreement about the fact that the compensation and payment of Rs.50,000/- as total package was reasonable in view of the length of service, passage of time and the rate of wages at which the workman was employed. It was also submitted that the present respondent, the mother of the workman, being sick at the ripe old-age of about 70, any further delay in the respondent getting any real relief would practically render the whole exercise fruitless for the party entitled to some relief.

6. Therefore, in the peculiar facts and circumstances discussed hereinabove, the petition is partly allowed with an order to pay to the respondent a total sum of Rs.50,000/-, out of which, Rs.10,000/- shall be paid to her in cash or by 'A/c payee cheque' in her name, within 15 days from today and the remaining amount of Rs.40,000/- shall be deposited by way of Fixed Deposit in her own name in a scheduled bank to be named by her for a period of one year. After the initial payment of

Rs.10,000/- and the Fixed Deposit being made, the petitioner shall be at liberty to withdraw the amount of Rs.43,500/- (Rs.3,500 deposited initially + Rs.40,000 deposited afterwards) deposited in this Court after showing the evidence of aforesaid payment and Fixed Deposit. The aforesaid payment shall be the full and final settlement on behalf of the deceased workman and no other heir, if any, shall claim any right against the petitioner. With this order, all orders against the petitioner and in favour of the respondent shall stand merged in this order and all the proceedings, including any applications pending before the Labour Court, between the parties shall come to an end and disposed accordingly. Accordingly, the petition is partly allowed and Rule is made absolute with no order as to costs. Liberty to apply in case of difficulty.

Sd/-

(D.H.Waghela, J.)

12.4.2002

(KMG Thilake)